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UNITED NATIONS STANDARDS AND NORMS IN THE FIELD OF CRIME PREVENTION AND CRIMINAL JUSTICE

Report of the Secretary-General

Addendum

USE AND APPLICATION OF THE BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY

Summary

The present report has been prepared in response to Economic and Social Council resolution 1993/34 of 27 July 1993. It contains information received from Governments and other sources on the use and application of the Basic Principles on the Independence of the Judiciary. Drawing on the experience gained from previous surveys, the report takes into account the specific recommendations made by the Commission on Crime Prevention and Criminal Justice. The results of the survey should provide a standard of comparison by which to assess the progress and needs of each country, and thus direct the course of future action by the Commission.

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INTRODUCTION

1. The Economic and Social Council, in its resolution 1993/34, section III, requested the Secretary-General to commence a process of information-gathering to be undertaken by means of surveys, initially paying attention to, *inter alia*, the Basic Principles on the Independence of the Judiciary.[1] The results of the surveys were to be considered by the Commission on Crime Prevention and Criminal Justice. In its resolution 1994/18 of 25 July 1994, the Council endorsed a questionnaire which had been drawn up by the Secretariat and reviewed by the Commission in response to that request.

2. This report provides a summary of the responses received from 57 countries.* Replies were also received from the following five non-governmental organizations: Howard League for Penal Reform (for Belarus); Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists; Japan Federation of Bar Associations (for the International Bar Association); Penal Reform International (for Cameroon and Uganda); and Andean Commission of Jurists (for Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela).

3. The present report summarizes the replies received, following the format of the Basic Principles on the Independence of the Judiciary. The Secretary-General has already covered a wide range of topics and analysed emerging trends in an earlier report (A/CONF.144/19 and Corr.1) on the implementation of the Basic Principles on the Independence of the Judiciary, which was submitted to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990.

4. In his last report to the Commission on Human Rights (E/CN.4/1995/39), the Special Rapporteur on the independence of judges and lawyers highlighted the historical background of his mandate, the legal framework and the methods of work on alleged violations of the independence of the judiciary, reviewed the progress achieved, and made concrete recommendations. In an earlier report, the Special Rapporteur had made suggestions for strengthening cooperation between the United Nations programmes on human rights and in crime prevention and criminal justice, including the establishment of a monitoring mechanism. Specifically, he had suggested that a special procedure be established to examine "the still too numerous violations perpetrated today, only the most symptomatic of which" had been described in his report; to elicit the cooperation of Governments in addressing relevant questions or situations; and "to remedy the insufficient involvement of judges' and lawyers' professional organizations in a question which is nevertheless of direct concern to them". He had further suggested that "apart from this monitoring function, the special procedure instituted might comprise prospecting for new work areas whose importance and urgency, already considerable, will probably attain priority status: justice and the media, justice and reasons of state, justice and emergency situations, justice and anti-terrorism measures etc." (E/CN.4/Sub.2/1993/25, part two, chap. II, paras. 10 and 11). The Commission on Human Rights, in its resolution 1994/41 of 4 March 1994, as approved by the Economic and Social Council in its decision 1994/251 of 22 July 1994, confirmed the proposal of the Subcommission on Prevention of Discrimination and Protection of Minorities to create a monitoring system to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officials, and the nature of problems liable to attack this independence and impartiality.

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*Argentina, Australia, Belarus, Belgium, Cameroon, Canada, Chile, Colombia, Cuba, Cyprus, Denmark, Dominican Republic, Finland, France, Germany, Greece, Guyana, Haiti, Holy See, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kuwait, Luxembourg, Malawi, Malta, Morocco, Mexico, Myanmar, Netherlands, New Zealand, Niger, Oman, Peru, Philippines, Portugal, Republic of Korea, Romania, Russian Federation, San Marino, Singapore, South Africa, Spain, Sudan, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Tonga, Trinidad and Tobago, Turkey, Ukraine, United Republic of Tanzania, United States of America, Uruguay and Vanuatu.

I. INDEPENDENCE OF THE JUDICIARY

A. Formal guarantees

5. Almost all States reported that the independence of the judiciary enjoyed constitutional guarantees. Thirteen States further indicated that the independence of the judiciary was guaranteed not only by the constitution, but also by the law of the States concerned. Other States replied that the independence of the judiciary was enshrined in law, but was not guaranteed by the constitution. In Israel, for example, a constitution does not exist. Israel has a number of basic laws that contain constitutional rules, including rules relating to the independence of the judiciary. The United States explained that the independence of federal judges in the United States system was not guaranteed by specific language in the Constitution, but that there were provisions in the Constitution, in statutes and in regulations which guaranteed the independence of the judiciary, such as provisions relating to life tenure for judges, the principle of no reduction in compensation for judges, the doctrine of separation of powers and the administration of the judicial branch by judges. Chile, Kuwait, Peru and United States stated that judicial independence was guaranteed by judiciary regulations. Switzerland observed that the organization of justice was essentially the responsibility of the individual cantons. Guyana reported that no attempt had been made to undermine the independence of the judges and lawyers.

B. Freedom from interference

1. External interference

6. Almost all States replied that the judiciary could decide matters both impartially and independently from "external forces", in particular, the police and prosecutors, offenders and their lawyers, politicians and the Government, social groups and public opinion. Other States reported that their judiciary was not free from external pressure. For example, the judiciary could not decide matters in total independence from the police in three States. Five States reported that the judiciary did not decide on certain matters independently from prosecutors. Offenders and their lawyers could influence judicial decisions in five other States. A number of other States reported that politicians and the Government might have an impact on judicial decisions. Social groups or public opinion could influence judicial decisions in six States.

7. Provision 2 prohibits intimidation and harassment of the judiciary, and almost all States protect members of the judiciary from intimidation by private individuals or organizations. Colombia, Haiti, Luxembourg and New Zealand to a certain extent protect their judiciary from intimidation and harassment.

8. While the previous report of the Secretary-General reflected in detail the difficulties Member States had to face with regard to personal security measures for judges, the protection of the personal safety of judges did not seem to be a major problem during the reporting period. Australia (Victoria) reported that providing judges with individual protection was generally seen as unnecessary. Security measures were in place to protect judges and officers of the court when it was considered necessary. Some courts had installed permanent security devices (i.e. metal detectors, scanners). In Niger, such protection was granted only on an exceptional basis; while in Belarus, Malawi, the Netherlands and New Zealand there was no provision of protection. In New Zealand, judges had the power to punish for contempt of court, and persons could be arrested for related breaches of the peace. Cyprus reported that, generally, judges were never under threats or intimidation by anybody. Their lives had never been in danger. Cameroon reported that one judge had been assassinated in the past, but that this was not connected with the exercise of his functions. In some States, however, intimidation of the judiciary has included physical threats and violence. While in many States, no judge had been assassinated in the past year, up to five judges had been killed in Germany, Iran (Islamic Republic of) and Italy. In Ukraine, three judges were assassinated in 1993. In Turkey, one judge was assassinated in 1993, for reasons still to be determined.

2. Internal interference

9. Provision 2 also prohibits improper interference which may come from sources within the judiciary. In many States, it was mandatory practice that a judge, deciding on matters within his or her competence, was not subject to directions from internal forces within the judiciary, in particular his or her superiors. Other States reported that this was not always the case. Argentina, Colombia, Haiti and the Holy See reported that the judiciary usually was not subject to directions from internal forces. In Argentina and the Holy See, it was mandatory practice not to give such directions in certain specified cases. In Australia (Victoria) and the Russian Federation, not allowing a judge to be subject to directions from his or her superiors in an individual case was a practice that was always, but not mandatorily, applied. In Switzerland, the principle was applied without exception in the case of members of the courts (the bench); in some cantons, however, examining magistrates had a hierarchical organization and received instructions from their superiors.

C. Competence and specialization of courts

10. As stipulated in provision 3, almost all countries reported that the judiciary had jurisdiction over all issues of a judicial nature, and that it had exclusive authority to decide whether an issue submitted for its decision was within its competence, as defined by law. Morocco and the Netherlands reported that the judiciary could always decide whether a matter rested within its own competence, but that this practice was mandatory by law with specified exceptions. Oman indicated that this practice was mandatory in certain specified cases, and that reforms on the issue would be introduced in the foreseeable future to comply with the Basic Principles.

11. Courts (or a separate section within a court) in the fields of criminal law had been established in almost all countries except Australia (Australian Capital Territory), Canada, Chile, Holy See, Israel, Italy, Singapore and Tonga. In many countries, courts or separate sections of a court were established in the fields of juvenile justice, civil law and administrative law. A number of countries had established courts or separate sections of a court in family law, labour law, trade law and traffic law. Some countries reported that there were courts or separate sections of a court for telecommunications law, social law, fiscal law, environmental law, town planning law or immigration law.

12. Courts (or a separate section within a court) in the fields of criminal law had been established in almost all countries except Australia (Australian Capital Territory), Canada, Chile, Holy See, Israel, Italy, Singapore and Tonga. In many countries, courts or separate sections of a court were established in the fields of juvenile justice (35 countries), civil law (43 countries) and administrative law (35 countries). A number of countries had established courts or separate sections of a court in family law (34 countries), labour law (38 countries), trade law (25 countries) and traffic law (22 countries). Some countries reported that there were courts or separate sections of a court for telecommunications law (10 countries), social law (18 countries), fiscal law (15 countries), environmental law (11 countries), town planning law (12 countries) or immigration law (12 countries).

D. Revision of judicial review

13. Provision 4 stipulates that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.

1. Revision

14. Many countries reported their observance of provision 4. Those countries pointed out that a judicial decision was never subject to revision by any authority or by the judge who, or the court which, initially decided on the same matter, and that this was mandatory practice. Kuwait reported that this principle was only exceptionally applied, and that the practice was mandatory in certain specified cases. In Australia

(Northern Territory), Canada, Germany, Greece, Uganda, United States and Vanuatu, the principle was usually applied that a judicial decision was not subject to revision by any authority, judge or court which initially decided on the case. This practice was mandatory in Australia (Northern Territory), Germany and Greece, while it was mandatory with specified exceptions in Uganda. Australia stated that judicial decisions were subject to review in certain circumstances by appellate courts. The United States further explained that the decision of a trial judge in the federal courts or state courts could be modified or reversed by that judge if an attorney in the case filed a post-trial (in the case of a jury verdict, e.g. motion for judgement notwithstanding the verdict) or post-judgement motion, and the judge after consideration determined that the verdict or judgement was erroneous under applicable law.

15. Germany noted that its procedure codes allowed that a court whose decision had been contested by ordinary complaint had to redress it if the court deemed the complaint to be well-founded. In Germany, as a rule, an ordinary complaint must be lodged with the original court, and - if the court redresses it - it makes a decision by the higher instance superfluous. In the Islamic Republic of Iran, no official authority or governmental office could change a sentence of courts of the Ministry of Justice or hamper its implementation other than a higher court or the court which had initially decided on the matter, in the cases defined by the law. Switzerland reported that the decision of the courts were subject to revision under specific conditions. Essentially, an applicant must adduce facts or evidence not known to the lower court. Revision was also allowable if the proceedings were influenced by a punishable act (e.g. perjury), or if an international tribunal so required, or if there was a contradiction between two rulings given on the same offence. Vanuatu noted that in principle the appeal rested with the Supreme Court or the Court of Appeal, while, as an exception, there was an escape clause. In San Marino, the law provided for specific cases of revision of civil and criminal rulings. In Colombia, the Dominican Republic and Finland the principle that a judicial decision was never subject to revision by any authority or by the judge who, or the court which, initially decided on the same matter was only exceptionally applied, and was mandatory only in certain specified cases. In Haiti, Jordan, Mexico, Philippines and Spain, the authorities, judges or courts always had the power to review matters on which they had initially decided, a mandatory practice in those countries. Oman envisaged reforms on the subject in the foreseeable future.

2. Judicial review of executive action

16. Numerous countries reported that the judiciary always had the power to overrule actions of the executive on substantive as well as on procedural grounds, and that the guarantees were mandatory. Australia (Northern Territory), Canada, Cuba, Holy See, Oman, Romania, Russian Federation, Switzerland and Turkey reported that such a practice was usually the case. Switzerland added that, as a rule, executive decisions relating to political activity might not be referred to the judiciary. In Canada, the superior courts generally had plenary jurisdiction with respect to reviewing, on application, the decisions of the executive in order to ensure compliance with laws. Such jurisdiction, however, could be limited by legislation. The superior courts had the constitutional right to review decisions of the executive in order to ensure compliance with the constitution. Australia (New South Wales, South Australia, Australian Capital Territory), Belarus, Luxembourg and Philippines reported that this was exceptionally the practice, and France reported that it was never the case. In Cameroon, Cuba, Romania, Switzerland and Turkey, the practice was mandatory with specified exceptions, while in Australia (New South Wales), Belarus, Holy See, Luxembourg, Oman and Philippines, the power of the judiciary to overrule actions by the executive was exercised mandatorily in certain specified cases. Niger explained that the judicial review of executive action involved cases where administrative decisions were challenged. Malta reported that a bill was now before Parliament to widen the powers of the courts to examine and rule on executive action and discretion. In Cuba, a situation in which the judiciary may overrule actions of the executive might arise in the case of a decision on housing. In Cuba, administrative litigation was possible under the law. Oman indicated that it expected reforms on the matter in the foreseeable future.

3. Judicial review of legislation

17. The judiciary has the power to review legislation enacted by parliament or another central legislative organ in Australia (except Western Australia and Australian Capital Territory), Canada, Colombia, Cyprus, Denmark, Dominican Republic, Germany, Greece, Israel, Japan, Malawi, Malta, Mexico, Oman, Peru, Philippines, Republic of Korea, Singapore, South Africa, Sweden, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Uganda, United Republic of Tanzania, United States, Uruguay and Vanuatu. New Zealand reported that its judiciary could review only delegated legislation. While the judiciary usually had the power to review legislation enacted by parliament or another central legislative organ in Argentina, Australia (Australian Capital Territory) and Russian Federation, the judiciary did not have such power in Australia (Western Australia), Belarus, Cameroon, Cuba, Finland, France, Haiti, Holy See, Iran (Islamic Republic of), Italy, Luxembourg, Morocco, Myanmar, Netherlands, Niger, Romania, Spain, Switzerland, Turkey and Ukraine.

18. Switzerland explained that the Federal Court (the Supreme Court of Switzerland) oversaw the constitutionality of cantonal law and of orders (regulations of a general nature or based on objective standards) issued by the Federal Council (the Government of Switzerland). Niger explained that the opinion of the Supreme Court was generally required prior to enactment. It could happen that a member of the public, in his or her defence, pleaded the unconstitutionality of a law. If that law was held by the Supreme Court to be unconstitutional, it would become void. In the Islamic Republic of Iran, the legislature was separate and independent from the judiciary power, thus, the judiciary had not the right to review legislation adopted by the legislative power. While the judiciary in Jordan, Netherlands and Sudan was not empowered to review legislation enacted by parliament or another central legislative organ, the judiciary had the power to do so regarding legislation enacted by organs which were subordinate to parliament or another central legislative organ. Malta reported that its constitution granted an *actio popularis* to everyone who felt that a particular law infringed the constitution, and that some laws had to be amended after being challenged by the courts. In Chile, the constitution laid down that the "Supreme Court shall, ex officio or upon application by a party, on any matters dealt with by it or referred to it by way of appeal lodged in procedures conducted before another court, be empowered to rule that a statutory provision which was contrary to the Constitution was inapplicable in these particular cases. Such petition could be filed at any stage of the procedures and the Supreme Court may order the discontinuance of the proceedings."

E. Ordinary courts

19. As stipulated in provision 5, almost all countries reported that everyone had the right to be tried by ordinary courts or tribunals using established legal procedures. Jordan, Peru and Singapore replied that this principle was applied to a certain extent. In Singapore, persons might be detained by an executive order under the Internal Security Act and the Criminal Law (Temporary Provisions) Act. Many countries reported that all tribunals used the duly established procedures of the legal process. Argentina and Australia (Australian Capital Territory) applied this principle to a certain extent, while it was applied only in some specific situations in Western Australia. Colombia further explained that members of the military forces, when committing an offence related to their duty functions, would be tried by penal military jurisdictions instead of the ordinary jurisdiction.

20. The right to be tried by an ordinary court using established legal procedures could be affected in certain circumstances in some countries. In the Dominican Republic, Haiti, Jordan, Mexico, Niger, Republic of Korea, Singapore and Sudan, there was a provision to deprive the judiciary of its power in a possible state of emergency. In Argentina, the judiciary could be deprived of its power to a certain extent. In France, the judiciary could be deprived of its power in some specific situation, while in Australia (New South Wales) and Cuba that might occur only exceptionally. In Switzerland, judicial organs would be appointed or granted more extensive powers. Peru reported that under the emergency regulations provided for in the Constitution, there was no provision for abolishing or suspending the functions of the judiciary. The special situation

through which Peru had been passing, from a social and political point of view, had led to the personal safety of judges being jeopardized by situations of conflict, as a result of which the judicial branch of Government, in coordination with the competent State agencies, had taken measures to safeguard and protect judges. In Niger, if a state of emergency was proclaimed, the rule of law was no longer observed and judges might be deprived of their powers. In France, in territories declared to be under martial law in the event of imminent danger as a result of a foreign war, the military courts might have criminal cases referred to them, and could also try offences listed in article 8 of the Law of 9 August 1949. If a state of emergency was proclaimed in all or part of a Department, a decree, issued following a report by the Attorney-General, the Minister of Justice and the Minister of Defence, could authorize the military court to assume jurisdiction for criminal cases, including related offences, which fell within the purview of the Assize Court of the Department concerned. In all other responding countries, there were no emergency provisions in place to deprive the judiciary of its power in a possible state of emergency.

F. Review of conviction

21. Most countries replied that everyone convicted of a crime has the right to a review of his or her conviction and sentence by a higher tribunal according to law. Argentina, Colombia, Denmark, France and Iran reported that this principle was only applied to a certain extent. Colombia further explained that a review was necessary if it was not possible to appeal the sentence. Vanuatu replied that this principle was always applied, except that anyone who had pleaded guilty could only appeal if he of she received a sentence of six months or more of imprisonment. The Government of Denmark made a reservation as to article 14, paragraph 5, of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex, of 16 December 1966). In Denmark, everyone convicted of a crime had the right to a review of his or her conviction and sentence by a higher tribunal according to law, except for minor offences specified by law, in which cases the convicted person must obtain permission to appeal. France stated, by way of example, that there was no right to a review of verdicts of the Assize Court, or, in some cases, of the decisions rendered by the police court.

G. Resources of the judiciary

22. Many countries reported that their judiciary was provided with the financial, personnel and other resources required to perform its functions properly. A number of countries, however, reported that necessary resources were only exceptionally available to enable the judiciary to function properly. While most countries regarded the provision of sufficient resources as mandatory, Australia (Western Australia), Denmark, Haiti, Malawi, Malta, Niger, Sweden and Uruguay reported that the provision of resources for the judiciary was at the discretion of the Government, the executive or a political power. Australia (New South Wales and Australian Capital Territory), France, Iran (Islamic Republic of), Jordan, Niger and Vanuatu reported that this principle was usually applied, while Haiti and Malawi reported that the judiciary was never provided with sufficient resources. The United Republic of Tanzania reported that the judiciary was usually provided with adequate resources, allocated at the discretion of the Government, the executive or political authorities. Niger explained that the Ministry of Justice had long been termed the "poor relation", since it possessed neither adequate financial nor human resources to enable it to discharge its functions properly. With the advent of democracy, there had been some improvement in the material resources made available to the judiciary for the performance of its work, but human resources were still insufficient. Peru reported that while the Peruvian judiciary, through the relevant legal provisions, had been endowed with an independence that should allow adequate administration of justice, there were, however, not yet sufficient funds to ensure the necessary material resources for a rapid and effective administration of justice. In Singapore, the remuneration of the judges of the Supreme Court was a charge on the consolidated fund under article 98 (6) of the Constitution. In Sweden, there was no legal provision under which parliament, which decided on budgetary matters, could provide the courts or any other public agency with specific resources. In Haiti, reforms were under way to provide the judiciary with the necessary human resources. To that end, a legal service training college was opened in July 1995. Haiti, Oman and Uruguay indicated reforms in the foreseeable future.

II. FREEDOM OF EXPRESSION AND ASSOCIATION

23. Many countries reported that the provision that members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly was respected, and that members of the judiciary were always entitled to these fundamental rights and freedoms, provided that judges conducted themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. The Holy See, Myanmar, Niger and Sudan stated that the principle of freedom of expression, belief, association and assembly was usually applied; in the Holy See and Myanmar, this practice was mandatory with specified exceptions. In the United States, the applicable code of conduct for federal judges restricted judges both from commenting on cases in their courts, or on matters that might affect pending or past litigation, and from engaging in partisan political activities. Some or all of these restrictions were applicable to state judges through state codes of judicial conduct. For Sudan, the practice was at the discretion of the individual judge. In Niger, freedom of expression, belief, association and assembly existed, although members of the judiciary were subject to the duty of discretion. Oman replied that the freedom of expression, belief, association and assembly for judges was only exceptionally applied in certain specified cases, but that reforms were expected in the foreseeable future. In Malta, a code of ethics was being drawn up to regulate the behaviour of the judiciary. In Jordan, the principle, on a mandatory basis, was never applied.

24. According to provision 9, judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence. In many countries, judges were free to act in accordance with that provision, which was guaranteed in a number of countries. In Japan, Niger and Sudan, the principle was usually applied. In Haiti, Jordan and Oman, judges were not allowed to form and join associations of judges or other organizations, and in Oman the restriction was applied mandatorily, with specified exceptions. In Cyprus, the law recognized the right of judges to form judges' associations. In the Republic of Korea, judges were free to join associations of judges or other organizations to promote their professional training. While, in Myanmar, judges were appointed by the Government, they were subject to the existing law concerning government servants and, in particular, the Government Servants Conduct Rules. In Niger, the Independent Union of Judges of Niger was set up in 1990. It was through the principle of the freedom of judges to join associations of judges that a solution could be found to the problem of providing financial, personnel and other resources to enable the judiciary to perform its functions properly. In Cuba, there was an association which brought together the lawyers of the country, including judges and prosecutors. In the former Yugoslav Republic of Macedonia, an association of judges had been registered in accordance with the existing law, and it had its statute and code of judges. In Argentina, there were no statutory provisions relating to such matters. The freedom of expression and association, which were guaranteed to all citizens, were not, however, subject to any restrictions in the case of judges.

25. In Peru, the constitution prohibited judges from forming trade unions and going on strike. That did not, however, prevent the establishment of associations of judges aimed at promoting their vocational and professional training, representing their interests, and protecting, subject to the regulations in force, the independence of the judicial branch and the judiciary. In Turkey, an authoritative decision adopted by the Supreme Council of Judges and Prosecutors prohibits members of the judiciary from joining associations or organizations. In Haiti, judges were free to form and join associations. However, they had never done so. In the Islamic Republic of Iran, in order to preserve judicial dignity and independence, judges were not allowed to participate in any political parties or take a job other than in the judiciary, except for education and training purposes. In Uruguay, there was an association of judicial magistrates which was affiliated to the International Union of Magistrates (Rome). The association was part of the Latin American Federation of Magistrates. The objectives of the association were to represent the interests of magistrates and to promote the professional upgrading of its members.

III. QUALIFICATIONS, SELECTION AND TRAINING

26. The replies received indicated that selection procedures differ greatly depending on the legal traditions of the State concerned. For example, States with the common law tradition select judges quite differently from States with the civil law tradition. Regardless of the legal tradition, however, almost all countries reported that they have established selection procedures that prohibit discrimination against persons on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status.

27. Guyana reported that its Constitution vested in an independent tribunal executive powers to appoint magistrates and to advise the President of the Republic as regards the appointment of judges of the High Court and the Court of Appeal. The Constitution also provided that the heads of the judiciary, namely the Chancellor and the Chief Justice, were to be appointed by the President after consultation with the leader of the minority party in parliament.

28. In many countries, judges undergo professional training in all areas of law or in the main areas of law (civil, penal and administrative law). In civil law countries and some common law countries, professional training for judges and magistrates was mandatory practice, except for lay judges in some countries. As a general rule, the requirement of specific professional training for judges was a feature of the civil law tradition, and was notably absent in common law countries. Judges undergo theoretical and practical professional training before assuming (full) judicial duties of at least one year in Finland, Italy, Luxembourg, Mexico, Myanmar and Sudan, two years in Cameroon, Colombia, Cuba, France, Jordan, Morocco, Niger, Republic of Korea, Spain, the former Yugoslav Republic of Macedonia and Turkey, three years in Greece and Ukraine, four years in Argentina, Singapore, Switzerland and Tonga, four to five years in Romania, five years in Australia (Australian Capital Territory), Belarus, Japan, Oman, Russian Federation and Sweden, and more than five years in Australia (New South Wales, Northern Territory, Victoria), Cyprus, Denmark, Germany, Holy See, Iran (Islamic Republic of), Netherlands and Philippines. Some countries reported that judges received less than one year of theoretical and practical professional training. Canada, United States and Vanuatu indicated that judges received less than one year of theoretical and practical professional training; that was also indicated by Israel and Peru, which have a civil law tradition. Malawi, which has a common law tradition, indicated that judges never received professional training.

29. Newly appointed judges undergo practical experience, under the supervision of a senior judge, for at least one year, in Greece, Jordan, Morocco, Myanmar, Netherlands, Niger, Spain, Sudan, Ukraine and Uruguay, for two years in Belarus, Cuba, Holy See and Iran (Islamic Republic of), Romania, for three years in Oman, for four years in Denmark and for five years in Japan. In Cameroon, judges before being appointed had to gain practical experience under the permanent supervision of their chiefs of jurisdiction for a non-defined duration. In some countries with a civil law tradition, a student, after completing a programme of studies, or an applicant for judicial duties had to undergo at least one professional examination to ensure that he or she was able to perform all the duties of a judicial office. As reflected in the previous report of the Secretary-General on the subject, most countries with a common law tradition, however, reported that because of their different legal system, a professional examination was not foreseen, particularly in view of the long-standing professional experience of lawyers who were appointed, or elected, to the bench. Similarly, in some countries with a civil law tradition, a professional examination was not required. The Russian Federation reported that such an examination was required to a certain extent. Uruguay reported that such examinations might be taken in specific situations.

30. Judges have the opportunity to participate in seminars to upgrade their skills in day-to-day practice in many countries, at least to a certain extent or in some specific situations. Malta, for instance, reported that from time to time, judges had been invited to attend meetings abroad and to visit courts with an international jurisdiction. Workshops and seminars were being held to exchange information and to debate particular

topics of special interest to the judiciary. Switzerland reported that such seminars were only exceptionally offered to judges, and Tonga indicated that this was never the case.

A. Civil law countries

31. As a general rule, in civil law countries judges are usually appointed after having completed special education for judges. In Finland, a candidate for a judicial professional post (judge or prosecutor) was required to have passed a university law degree. On average, judicial education in Finland took five years to be completed. In addition, there was a legal apprenticeship of one year (without final examination), during which the trainee assisted a judge in drafting decisions and taking minutes of hearings. In the German criminal courts, lay judges, together with at least one presiding professional judge, participated in hearings and deliberations with the same voting rights as professional judges. Lay judges were not provided with any special training; when they took office they were merely acquainted with the course of proceedings and with their rights and duties. In the Netherlands, a distinction was made in the election process between young lawyers and lawyers with at least six years of experience. Lawyers without experience followed a six-year course in basic theory and practice. Subsequently, before being appointed as judges, they were required to complete at least one year of training as a judge's clerk and deputy.

32. The Judicial Academy of Chile was established by law in 1994 to provide instruction to candidates for first-level career posts in the judiciary (court secretaries, judges and appeal-court judges) and in-service training for all members of the judiciary. In Romania, practical training for judges under the supervision of a senior judge was compulsory. They were known as probationary judges for a two-year period. After this training, they were required to undergo an aptitude examination to be able to take up judicial office. In Colombia, a judge was never supervised by his or her superiors, but was fully responsible for his or her decisions. In Mexico, the Supreme Court of Justice was empowered to appoint supernumerary judges and magistrates to assist in the work of the courts in order to ensure the prompt and expeditious administration of justice. In Colombia and Peru, judges received professional training in those specific areas of law in which they would later practice. In Peru, the Judges' Academy was an institution responsible for the training of judges and government procurators at all levels, for the purpose of their selection. In Sweden, all future judges underwent "in-training" as non-permanent judges. A newly appointed judge in a court of first instance might be offered an opportunity to serve in a court of appeal, where the bench was always collegial, for a short time, that is, six to nine months. In Uruguay, all judges were required to be lawyers. In law school, students had the opportunity to take an introductory course to become a magistrate. Further, students could take a course in the centre for judicial studies, which was also not compulsory for designation as a magistrate. Students who took the course, however, would be regarded more favourably by the Justice of the Supreme Court when appointing judges.

33. In the Islamic Republic of Iran, an applicant for judicial duties had to undergo a four-year period of professional training at the Faculty of Judicial Sciences, which is associated with the judiciary, in order to obtain a degree of Bachelor of Laws. In addition, the Head of the Judiciary Branch was responsible for the employment of just and worthy judges, their dismissal, appointment, transfer, assignment to particular duties and promotions, as well as similar administrative duties, in accordance with the law. In the Islamic Republic of Iran, judges were chosen among persons who were Muslim, competent, well-known and of Iranian extraction. In Niger, until 1992, students who obtained a master's degree in law specializing in the judiciary were directly admitted to the National Legal Service Training College in Paris to undergo 18 months of theoretical and practical training. Since September 1994, candidates holding a master's degree in law had to take a test before being allowed to enrol for the training course, lasting two years.

34. There were exceptions to the general rule in the civil law tradition that judges should undergo specific professional training. For example, in Switzerland, judges were elected by the public, either by parliament or by a board of representatives of the authorities and other concerned organs. The election process was more politicized in some cantons than in others. It was generally accepted that each large political party was

entitled to a quota of judges. There was no legal service training establishment in Switzerland. Although the practice was only rarely laid down by law, professional judges were required as a rule to hold at least a law degree and an advocate's diploma, which involved six years of university studies, and practical training for advocates took a further two years. In Turkey, advocates who had more than five years of professional experience might be appointed as judges or prosecutors following acceptance by the Supreme Council of Judges and Prosecutors. In Haiti, the judges appointed to date were advocates. In-service training sessions were organized for them. Initial training had not yet been introduced.

B. Common law countries

35. As a general rule, in common law countries there was no specific professional education for judges distinct from a general legal education. In those countries, judges were usually elected or appointed from the bar after having been in practice as lawyers for several years.

36. In South Africa, for example, judges of the Supreme Court were appointed by the President of South Africa acting on the advice of the Judicial Service Commission (section 104 (1) of the Constitution). The Chief Justice of South Africa presided at the meetings of that Commission. Judges were persons qualified and experienced in law and legal practice. In the United States, almost all judges were lawyers who had been to law school and received training in most areas of the law, but there was no pre-appointment or pre-election training of judges or aspirants for judicial office in either the federal or state courts. Judges were selected as part of the political process in a democracy. In Canada, it was generally considered unconstitutional, as an infringement on judicial independence, to compel a serving superior court judge to undergo mandatory judicial training or continuing education. Canadian judges were appointed from among experienced members of the legal profession. Newly appointed judges had to undergo mandatory orientation and judgement-writing courses under the direction of the judiciary. The vast majority of judges participated in a wide variety of continuing education courses and training throughout their judicial careers.

37. Australia reported that all judges were legal practitioners and had undergone both academic and professional training. However, persons were not specifically trained to be judges. In Australia (Western Australia), the Australian Institute of Judicial Administration conducted courses for newly appointed judges. In Australia (Australian Capital Territory), some judges undertook training after their appointment. Courses covered a wide variety of issues, and were organized by the judiciary. In Cyprus, judges were selected from the body of practising advocates. They must be of a high moral standard and must have at least five years of experience in the legal profession. Judges of all lower courts were appointed by the Supreme Council of Judicature, which consisted of all the judges of the Supreme Court. New Zealand reported that the only formal training was an annual week-long orientation programme for lower court judges. High Court judges might also attend. Although there were no formal safeguards in relation to the appointment of judges, the Human Rights Act of 1993 outlawed such discrimination. In Vanuatu, senior members of the judiciary were expatriates from Australia and the United Kingdom. They were people with a minimum of 15 years of experience at the bar. Senior magistrates were locals with law degrees and a minimum number of experience. In Vanuatu, where there were also lay magistrates and justices, there was a need for professional judicial training. Malta reported that a judge of the superior courts was only appointed after at least 12 years from the day of the warrant, while a magistrate was appointed after he had practiced as an advocate for at least seven years from the day of the warrant.

IV. CONDITIONS OF SERVICE AND TENURE

A. Remuneration

38. According to provision 11, the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

39. As reflected also in the earlier report of the Secretary-General, many countries reported that the amount of remuneration of a judge ensured that the judge could afford at least an average living standard. For example, the Constitutions of South Africa and of the United States provided that compensation of judges may never be reduced. Belarus, Holy See, Iran (Islamic Republic of), Myanmar, Niger, Ukraine, United Republic of Tanzania and Uruguay reported that the remuneration of judges usually ensured an average living standard, whereas in Haiti and the former Yugoslav Republic of Macedonia that was never the case. While for most countries adequate remuneration of judges was mandatory practice, in Australia (South Australia and Australian Capital Territory), Haiti, Myanmar, Singapore and Ukraine, the rate at which judges were remunerated was subject to the discretion of the Government, the executive or political authorities. In Vanuatu, judges were paid in accordance with the salary scales of the Public Service and Official Salaries Act. In San Marino, proper remuneration for judges was guaranteed by law. In Peru, judges were guaranteed a remuneration that ensures that they could afford an adequate living standard, in keeping with their mission and rank. In Oman, reforms will be introduced in the foreseeable future to comply with the Basic Principles. In Malawi, the salaries and pensions of judges were currently under review. In New Zealand and Turkey, information on the remuneration of judges was not available.

40. In almost all countries, conditions of service, the age of retirement and the term of office of judges was secured by law. In Australia (Victoria and Australian Capital Territory), these conditions were secured to a certain extent, while in Sweden, that was not the case. In Australia (Victoria), some of the judges' conditions of service (e.g. long service, leave entitlement, motor vehicle entitlement) were not secured by law. In the Islamic Republic of Iran, in case of retirement and need, judges might continue to practise their professions, subject to the agreement of the head of the judiciary.

1. Reporting obligations on personal debts or liabilities

41. In some countries, a judge, on a mandatory basis, had to report to the president of the court any personal debt or liabilities exceeding a certain amount. For example, in Singapore, a judge of the subordinate courts had to declare his or her indebtedness to the Government annually. In many countries, however, such an obligation was never imposed.

42. In Romania and Switzerland, judges were usually required to report personal debt or liabilities, while in Canada, Luxembourg, Niger and Oman, that was the case only on an exceptional basis. New Zealand and South Africa reported that information on the application of this principle was not available. In Niger, no provisions existed concerning the debts and liabilities of judges, irrespective of the amount involved. However, if they were reported to the judges' superiors, a solution was quickly found in the interests of the legal service. In the United States, under the federal system, all judges had to file financial disclosure forms disclosing their assets and liabilities. These were filed with the Administrative Office of the courts of the United States, and were a matter of public record to which chief judges and other judicial officers had access, as well as members of the media and private citizens. In Australia (Victoria), a candidate for appointment had to prepare a declaration of pecuniary interests which was submitted to the Attorney-General. In Denmark, a judge was not required to report any debt or liability. There was, however, a procedure established to deal with complaints about members of the judiciary, the purpose of which was to preserve their dignity. In the Dominican Republic, the Organization of Justice Act provided that judges, judicial employees and officers should observe the law, conduct themselves properly, and comply with the obligations devolving upon them. In Sweden, a judge, if involved in personal bankruptcy, was prevented from exercising

his or her functions. In Turkey, if the personal debt of a judge exceeded a specific amount and deferment of its payment became the subject of legal proceedings, the judge was liable to a disciplinary penalty determined by the Supreme Council of Judges and Prosecutors. In the Islamic Republic of Iran, the administration of the judiciary was not concerned with the personal debts of judges, but the possibility was considered of giving a loan to judges who might be indebted. In Switzerland, judges were in general required to notify the judicial supervisory authority of their insolvency or personal bankruptcy or of the filing of proceedings against them.

2. Pension

43. A number of countries reported that the amount of a judge's pension ensured that there was no need for additional savings in order to maintain his or her living standard after retirement. In Malta, a law was being enacted to ensure more generous pensions for judges and magistrates. In some countries, this principle was usually applied. In Belarus and Ukraine, the pension of judges only exceptionally maintained the same living standard for judges after retirement, while in Haiti, Morocco, Sudan and the former Yugoslav Republic of Macedonia, it was never the case that the pension ensured the same living standard.

44. While the provision of a pension for retired judges which secured the same living standard for them after retirement was mandatory practice in a number of responding countries, it was subject to the discretion of the Government, the executive or political authorities in Australia (Australian Capital Territory), Belarus, Haiti, Iran (Islamic Republic of) and Uganda. In Myanmar, the living standard of a retired judge depended upon the spending habits of the judge throughout his or her career and also on the size of his or her family. In Niger, the pension paid to judges was based on their salary without additional benefits, and was thus not sufficient to maintain their living standard after retirement.

45. In the United States, judges in the federal system were entitled to retire with a pension according to age and the number of years served, or they could continue to serve during their lifetime with full pay. Most, if not all, state court systems in the United States had pension plans based on age and number of years of service. Australia (Victoria) reported that there were constitutional provisions for the payment of a pension to judges at the rate per annum of 60 per cent of their annual salary. In the Netherlands, judges had the same pension entitlement as other public servants. Pension entitlements were related to pensionable years of service. The maximum was reached after 40 years of service. Entitlements were calculated on the basis of the last salary earned. In Switzerland, the pension generally allowed a retired judge to maintain a living standard consistent with the average for the country. In Peru and San Marino, judges were guaranteed a just pension. In Vanuatu, there was no pension scheme. Oman and Sudan indicated that reforms were expected to be introduced in the foreseeable future to conform with the Basic Principles.

B. Guaranteed tenure

46. In almost all countries, judges, whether appointed or elected, had guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such existed. In Switzerland, judges did not have guaranteed tenure. They were generally subject to re-election at the end of an administrative term of office (most often four years). In Peru, judges were guaranteed security of tenure and permanence of service as long as they showed appropriate conduct and fitness for their functions. Tenure was guaranteed to a certain extent in Cuba, Holy See, Mexico, Morocco and Uganda. In Cuba, judges were all elected and could be removed from office at any time for reasons laid down by law. In the absence of such reasons, they had guaranteed tenure. In Romania, tenure was guaranteed in some specific situations, while in Switzerland that was not the case. In Singapore, tenure was guaranteed for all judges of the Supreme Court, but not for judges of the subordinate courts. New Zealand reported that its Constitution protected judges of the High Court against removal from office and reduction of salary. In Niger, the Judiciary Act provided for judges' security of office. However, if the requirements of the service so necessitated, judges could be transferred

by the appointing authority, with the consent of the Judicial Service Commission, which should give the reasons for its decision.

C. Promotion

47. Many countries reported that they had established procedures ensuring that the promotion of judges was based on objective factors, such as particular ability, integrity and experience. In Australia (Victoria), Belarus, Cameroon, New Zealand and Switzerland, such procedures were established to a certain extent. In Australia (New South Wales, South Australia and Australian Capital Territory), Canada and United States, such a procedure was not established.

48. In New Zealand, judges might be promoted in limited circumstances. There was, however, no specific procedure by which that was done. The United States noted that there was no system of promotion, because judges in both the federal and state systems were selected as a part of the political process for specific judicial positions. In Canada and San Marino, there was no judicial promotion system in place. In Switzerland, judges might apply for a higher post when a vacancy occurred. The election system was organized so that a candidate's ability, integrity and experience were taken into consideration, political affiliation also playing a part.

D. Assignment of cases

49. Almost all countries reported that the assignment of cases to judges within the court to which they belonged was an internal matter of judicial administration, as stipulated in provision 14. In New Zealand, district court registrars exercised some powers in this area subject to judicial oversight. In Colombia, assignment of cases to judges was not an internal matter of judicial administration. In many responding countries, cases were assigned to judges by rotation or some other method to ensure random distribution. In some countries, random distribution was usually ensured, while in Belarus such a method was not applied. In the United States, there was usually random assignment. The nature of a particular case (e.g. complex antitrust case) might, however, cause a chief judge to assign that case to a judge with experience in that area. In Switzerland, cases were sometimes assigned by the chief judge or by the president of the court; in the smaller cantons, particularly in rural areas, there was often only one judge in office.

50. In some countries, cases were always assigned on a mandatory basis to a judge by notion, which was a procedure designed to ensure impartiality. In Finland, Greece, Israel, Niger, Russian Federation and Turkey, cases were usually assigned to a judge by notion. In Australia (Victoria), Myanmar, Netherlands, that procedure was only exceptionally followed. In Australia (South Australia and Australian Capital Territory), Belarus, Colombia, Germany, Haiti, Jordan, Mexico, Spain, Sudan (mandatory), Sweden, Switzerland, Ukraine and Vanuatu, cases were never assigned to a judge by notion. Australia (Australian Capital Territory) reported that the assignment of criminal cases to judges was random, determined by call-over, which itself entailed input from the prosecutor and defence. In Germany, cases were assigned to court divisions. A court division would consist of a judge sitting alone or of a number of judges. The composition of the divisions of a court using judges attached to that court was laid down in the roster distributing court business. The roster also laid down which court divisions had to decide which groups of cases. The roster of court business was drawn up before the beginning of each business year. It was then binding for the duration of that year, and could only be altered on grounds listed by statute, which, however, had nothing to do with individual cases. The roster distributing court business was drawn up by judges of the court itself, and when doing so they acted in judicial independence. Random distribution of cases was thus ensured. In Denmark, the method of assigning cases to judges within the court was an internal matter of the individual courts, and methods varied from one court to the other. In San Marino, cases were assigned to the individual judges, and where more judges were in the same level of jurisdiction, the relevant criteria were established in advance by the Chief Judge of the Office. In Malta, in the inferior courts, criminal cases were assigned by lot. In the superior courts, there was normally one judge entrusted with criminal cases. Cyprus reported

that, at the beginning of each judicial year, the President of the Court submitted to the Supreme Court for approval the programme of work in accordance with which cases were assigned and tried. Oman expected reforms to be introduced in the foreseeable future.

V. PROFESSIONAL SECRECY AND PERSONAL IMMUNITY

A. Professional secrecy

51. Provision 15 stipulates that the judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters. In almost all countries, as a mandatory practice, the judiciary was always bound by professional secrecy with regard to their deliberations and to keeping confidential any information acquired in the course of their duties.

52. In Singapore, this principle was always applied, following judicial practice and not by law. In Australia (Australian Capital Territory), the judiciary was bound to secrecy subject to the discretion of the Government, the executive or political authorities. In Australia (Australian Capital Territory), Haiti and Sweden, the judiciary was not always, but in many instances, bound to such secrecy, as mandated by law. In Argentina, the judiciary was always bound by professional secrecy with regard to their deliberations and confidential information received in the conduct of their duties. However, this principle was not mandated by law, except where judges had to deal with juvenile justice cases. In Colombia, judges were never bound by professional secrecy. In Sweden, a judge was always bound by secrecy regarding what had been taking place during deliberations. Regarding other information which was subjected to the court during proceedings, there was an obligation for secrecy only if that was provided for by law. In Uruguay, judges had mandatory professional secrecy with respect to the deliberations and the confidential information they received in their functions. Judges would not have to testify as witnesses in connection with such matters. Such secrecy did not involve information disclosed in public hearings.

53. In many countries, judges could not be compelled to testify on matters or information acquired in the course of their duties and in public proceedings. While in Argentina, that was the general practice, it was not mandated by law. In Colombia, Finland, Greece, Philippines, Sudan and Switzerland, judges could usually not be compelled to testify on such information. In Australia (Australian Capital Territory), Germany and Sweden, judges could only exceptionally plead that they were not compelled to testify on matters or information acquired in the course of their duties and in public proceedings. In Australia (South Australia) and Tonga, judges could be compelled to testify on matters or information acquired in the course of their duties and in public proceedings, if so required.

54. In Denmark, the judiciary could not be compelled to testify on confidential matters, but could be obliged to do so on other matters acquired in the course of their duties and in public proceedings. In Germany, judges were under a duty to preserve official secrecy. This meant that they were required to preserve secrecy about matters that had come to their knowledge during their official activity. There was an exception, in that judges were allowed to testify on such matters before court if their service superior had given his or her consent. Consent might only be refused if the testimony was regarded as detrimental to the well-being of the Federation or of a German Land (state), or would seriously jeopardize or considerably impede the performance of public duties. In addition to their duty to preserve official secrecy, judges were bound by the duty to preserve secrecy regarding their deliberations. Secrecy of deliberations prohibited judges from making any statement about their deliberations and voting, except where preservation of the secrecy of deliberations would prevent a court from remedying the consequences of illegal deliberation or voting, or from making judges responsible for their voting in a civil or criminal court procedure. In New Zealand, San Marino and South Africa, information on the application of this principle was not available. Oman expected to introduce reforms in the foreseeable future.

B. Personal immunity

55. As stipulated in provision 16, without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions. In many countries, judges always enjoy personal immunity in accordance with that principle. Compared with the results that emerged from the previous report (A/CONF.144/19), the concept of the personal immunity of judges from civil suits did not change during the reporting period.

56. This principle was usually applied in Iran (Islamic Republic of), Netherlands, New Zealand, Sweden, Switzerland, Trinidad and Tobago and Uruguay, and exceptionally in France, Greece and Myanmar. Judges were personally liable for monetary damages for improper acts or omissions in the exercise of their judicial functions in Argentina, Belarus, Cameroon, Colombia, Denmark, Dominican Republic, Finland, Italy, Mexico, Morocco, Oman and Tonga. In Niger, no law provided for the possibility of payment of damages to an injured party by the State, as employer. In Australia (Australian Capital Territory), judges enjoyed immunity from civil suits in the exercise of their judicial functions, although the matter was undecided as to the extent of the protection, as no judge in the Australian Capital Territory had been in that situation. In Finland, victims of judicial misconduct could institute claims against the judge as well as the State. The State was thus responsible for paying damages caused in the exercise of judicial functions in the first place. In Greece, the constitution provided for a special court to rule the civil suits against the members of the judiciary. In addition, a special law declared judges liable for damages caused by malice or gross negligence in the exercise of their judicial functions. In Germany, the Civil Code provided for liability for breaches of official duty committed by a judge when passing judgement in litigation, only if the breach concerned was a criminal offence or another breach of official duty, including refusing to perform, or delaying the performance of, official duties. In such cases the victim's claims did not lie against the judge concerned, but against the Federation or one of its States.

57. In the Netherlands, a judge might be held personally liable only if, in the performance of his or her duties in a specific case, he or she violated the principles of law, and such violation might have resulted in an unfair or impartial hearing, and no appeal against the decision was possible. In New Zealand, in circumstances where a District Court Judge was liable for an act or omission in relation to his or her judicial duties, the Crown would indemnify the District Court Judge. In the Islamic Republic of Iran, according to the constitution, whenever a person was hurt morally or materially, and a judge was considered to be the culprit, he was legally responsible for the fact. But if he was not the culprit, the damages would be compensated for by the State. In Switzerland, it was generally the State which was liable for faults committed by judges in the performance of their duties. In cases of gross negligence, the State might institute an action for indemnity against the official concerned. In Mexico, public servants were liable to administrative sanctions for acts or omissions violating the standards of probity, integrity, loyalty, impartiality or diligence required in the performance of their duties; the penalties imposed might be suspension, dismissal, disqualification or a fine, without prejudice to any penal sanctions applicable. In San Marino, the responsibility of judges was established by law. Legal action for reimbursement could be taken against the State, which could then make up for the loss against the judge responsible for the damages. In Uruguay, judges could be held responsible in cases of grave misconduct. Such cases were dealt with by the Supreme Court of Justice.

VI. DISCIPLINE, SUSPENSION AND REMOVAL

A. Fair procedure

58. As stipulated in provision 17, a charge or complaint made against a judge in his or her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge

shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge. In accordance with this principle, almost all countries reported that charges or complaints made against a judge were processed expeditiously and fairly, under appropriate procedures.

59. The practice was guaranteed to a certain extent in Argentina. In order to separate a judge from his or her post, proceedings of a political nature would be conducted by the Chamber of Deputies and concluded by the Senate. In Colombia, a special procedure was established for disciplinary matters. The Disciplinary Chamber of the Superior Council of the judiciary was the competent body to deal with disciplinary offences. In Niger, any complaints made against members of the judiciary were confidentially investigated, in the case of judges, by their superior or, in the case of judicial officers, by the prosecutor to whom they were responsible. In the event of proceedings, the member of the judiciary enjoyed jurisdictional privilege, competence being exercised by the Supreme Court. In New Zealand, there was no formal procedure, complaints could be made to the Chief Justice, the Chief District Court Judge, the Law Society and the Minister of Justice or Attorney-General.

B. Specified reasons

60. According to provision 18, judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties. In many countries, judges were subject to suspension or removal only on those grounds. The principle was always applied on a mandatory basis in all responding countries, except in Belarus, New Zealand, Sudan and Uruguay. In Uruguay, the principle was usually applied on a mandatory basis, with specified exceptions. In South Africa, a judge might be removed from office by the President only on the grounds of misbehaviour, incapacity or incompetence established by the Judicial Service Commission and upon receipt of an address from both the National Assembly and the Senate requesting such removal. In Australia (Victoria), judges hold their offices subject to good behaviour. The Governor in Council might remove a judge upon the address of both Houses of the Legislature. In New Zealand, judges might only be removed from office, as there was no provision for suspension. In Switzerland, a judge might be removed only by judicial judgement; it was also possible, however, that a judge would not be re-elected upon expiry of his or her administrative term of office. Oman expected reforms to be introduced in the foreseeable future to conform with the Basic Principles.

C. Established standards

61. Disciplinary, suspension or removal proceedings were determined in accordance with established standards of judicial conduct in almost all countries on a mandatory basis, as set forth in provision 19. In Haiti, such proceedings usually took place. In Oman, the proceedings were mandatorily in accordance with established standards of judicial conduct, but with specified exceptions. In New Zealand, there was no provision for disciplinary or suspension proceedings. Peru reported that the Law on the Organization of Justice laid down the grounds for the imposition of sanctions on judges, together with the corresponding procedure. In Peru there existed a National Council of the Judiciary, an organ recognized by the constitution with the power of removing from office the judges of the Supreme Court and senior government procurators and, at the request of the Supreme Court and of the Board of Senior Procurators, respectively, judges and government procurators attached to any court. In the Islamic Republic of Iran, it was impossible to remove a judge, whether temporarily or permanently, from the post he occupied, except by trial and proof of his guilt, or in consequence of a violation entailing his dismissal. A judge could not be transferred or reassigned without his consent, except in cases where the interests of society necessitated it. In such cases, a decision was taken by the head of the judiciary branch after consultation with the chief of the Supreme Court and the Prosecutor General. The periodic transfer and rotation of judges, however, was in accordance with general regulations laid down by law.

D. Independent review

62. As stipulated in provision 20, decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

63. Disciplinary, suspension or removal proceedings were subject to an independent review in many countries. In Australia (Northern Territory), Greece, Islamic Republic of Iran, Turkey and Ukraine, the practice was usually applied, while in Luxembourg, an independent review was only exceptionally undertaken. In Argentina, Australia (Victoria, Queensland, South Australia), Colombia, Mexico, Morocco, Netherlands and Niger, such independent review proceedings did not exist. In South Africa, there was no procedure in terms of which disciplinary, suspension or removal proceedings were subject to an independent review. The Constitution of South Africa, however, provided that "every person shall have the right to have justiciable disputes settled by a court of law or, where appropriate, another independent and impartial forum". In the United States, in the federal courts, judges might be removed only by the impeachment process, in which charges were brought against the judge in the House of Representatives, and the case was tried in the Senate. Judicial councils in the federal circuits had some limited judicial disciplinary powers. In many of the state systems there were judicial disciplinary commissions which had specific powers of judicial discipline. In Australia (Victoria), disciplinary proceedings were not governed by legislation and would occur as an "in-house" process. In Australia (Queensland), magistrates and District Court judges might be removed by the Executive. A judge of the Supreme Court might be removed upon an address by Parliament to the Governor. The final decision rested with the Governor. In Cyprus and the Netherlands, disciplinary proceedings fell within the jurisdiction of the judges of the Supreme Court.

VII. ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

64. Non-governmental organizations submitted replies which complemented information received from Governments on the use and application of the Basic Principles. In the view of some non-governmental organizations, although the constitution of many countries included provisions similar to those contained in the Basic Principles, in practice they were not always adhered to. In particular, CIJL reported that violence aimed at judges remained a dire obstacle to judicial independence in many countries. In its annual reports on the independence of the judiciary, entitled *Attacks to Justice*, CIJL catalogued cases in which judges and judicial officers have been harassed, persecuted, and, in some cases, assassinated.

65. Some non-governmental organizations provided information on the use and application of the Basic Principles in specific countries. For example, Penal Reform International reported on the observance of the Basic Principles in Cameroon. Penal Reform International indicated that, in their view, judicial independence was not fully guaranteed in Cameroon. It noted also that, in the areas of the protection of judges against intimidation and harassment, remuneration of judges, guaranteed tenure, internal interference, judicial review of executive action and resources available for the judiciary, the Basic Principles were not fully applied. In addition, some improvements in the training of judges were regarded as necessary to improve the overall functioning of the judiciary in Cameroon.

66. Penal Reform International reported on the application of the Basic Principles in Uganda. It noted some difficulties with regard to internal and external interference, the right to be tried by ordinary courts, and disciplinary, suspension and removal procedures for judges, but also indicated that reforms were expected to be introduced in all those areas so as to ensure full compliance with the Basic Principles in the foreseeable future.

67. With regard to the respect of the Basic Principles in Japan, the Japan Bar Association, on behalf of the International Bar Association, suggested some improvements regarding internal and external interference and the freedom of expression, belief, association and assembly for judges.

68. The Andean Commission of Jurists provided some information on the use and application of the Basic Principles in Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela, reporting that in all those countries, except in Colombia, sufficient funds were not available for the judiciary, and that in all except Chile, difficulties were observed in selection procedures, as well as deficiencies particularly as regards the competence of courts (i.e. competence of Colombian regional courts and competence of Peruvian military courts in cases of terrorism) and promotion of judges (i.e. in Bolivia, Chile, Ecuador and Peru).

69. The Howard League for Penal Reform reported on the use and application of the Basic Principles in Belarus, noting difficulties in the internal and external independence and the competence and specialization of courts, the judicial review of executive action, the right of persons to be tried by ordinary courts, and resources available for the judiciary in Belarus. It also noted that the freedom of expression and association, as well as the professional training of judges, needed improvement in Belarus. Also, a system of promotion of judges should be established, as well as procedures for their discipline, suspension or removal, in accordance with the Basic Principles.

VIII. TECHNICAL ASSISTANCE

70. Many countries expressed their interest in receiving technical assistance in terms of, *inter alia*, exchange of experience, planning, financial aid, research, assistance in legal reform and training, as reflected in the following table:

Requests for assistance

Form of assistance	*Number of countries requesting assistance*
Exchange of experience	19
Training	19
Research	18
Financial aid	17
Planning	13
Assistance in legal reform	10

71. Some countries requested assistance in specific areas of their judicial systems. Guyana, for instance, reported that the long delays in the resolution of both criminal and civil matters displayed the main weakness in the judicial system. Accordingly, Guyana requested advisory services and technical assistance to ensure independent and impartial justice in the country. Malta requested particular assistance in the management and sentencing of judicial cases. Colombia, Cuba, Haiti, Iran (Islamic Republic of), Jordan, Malawi, Niger, Oman, Romania, the former Yugoslav Republic of Macedonia, Tonga and Vanuatu requested assistance in training judges and magistrates, as a matter of priority. In addition, Haiti requested assistance in building construction; Sudan in operating its printing press, which issues law reports, research papers and periodicals; and Colombia in applying disciplinary measures to combat corruption, and in ensuring more effective evidence-gathering in investigations. Cuba indicated the need for assistance in the publication of national legislation and improving the efficiency and functioning of the courts. Similarly, Morocco stressed the need

for some financial aid for electronic equipment. The Government of Vanuatu needed assistance, in particular, in setting up a better remuneration and pension scheme for judges. The Howard League for Penal Reform (for Belarus) and Penal Reform International (for Cameroon) noted that assistance in the training of judges and magistrates was a matter of high priority. In addition, the Howard League for Penal Reform reported that in Belarus, some financial aid for electronic equipment was needed.

72. Several countries offered to provide assistance. The type of assistance most frequently mentioned and the number of States offering it were as follows: exchange of experience (18); training (10); research (8); and legislative reform (7).

IX. CONCLUSIONS

73. According to the information received, the Basic Principles enjoy respect in most countries. There appear to be only a few countries still needing to improve fundamental guarantees which would ensure the independence of the judiciary in all its aspects.

74. Further, as illustrated by the breadth and depth of the responses received, the principle of the independence of the judiciary is of central concern to many States. Judging from the responses, a large number of States were undertaking significant efforts to ensure the use and application of the Basic Principles in their national law and practice. Differences in legal tradition, however, particularly between common law and civil law countries, seem to suggest different approaches to the subject of judicial independence. That should be kept in mind when providing technical assistance.

75. As has been pointed out, the promotion and protection of judicial independence requires an ongoing commitment on the part of all States. No matter how well established the independence of the judiciary may be, constant vigilance and international cooperation are necessary to ensure continuing respect for judicial independence.

76. The Commission may wish to discuss further ways and means of assisting States, upon request, in the enhanced use and application of the Basic Principles. The suggestions made by the Special Rapporteur, as well as the proposals agreed upon by the Meeting of Experts for the Evaluation of Implementation of United Nations Norms and Guidelines in Crime Prevention and Criminal Justice, held at Vienna from 14 to 16 October 1991 (E/CN.15/1992/4/Add.4), could provide useful indications to the Commission.

77. Further, the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, as adopted by the Council in its resolution 1989/60 of 24 May 1989, offer additional guidance. The Procedures specify, *inter alia*, that States shall ensure that the Basic Principles are widely publicized in at least the main or official language or languages of each State. In particular, States shall make the text of the Basic Principles available to all members of the judiciary (Procedure 4). In addition, States shall encourage seminars and courses at the national and regional levels on the role of the judiciary in society and the necessity for its implementation (Procedure 6), which shall also be promoted by the United Nations (Procedure 11 d). According to Procedure 14, the Commission shall identify existing obstacles to, or shortcomings in, the implementation of the Basic Principles and the reasons for those obstacles or shortcomings, making specific recommendations, as appropriate, to the General Assembly and the Council, and to any other relevant United Nations human rights bodies.

Notes

[1]*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

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UNITED NATIONS STANDARDS AND NORMS IN THE FIELD OF CRIME PREVENTION AND CRIMINAL JUSTICE

Report of the Secretary-General

Addendum

RECOMMENDATIONS OF THE EXPERT GROUP MEETING ON VICTIMS OF CRIME AND ABUSE OF POWER IN THE INTERNATIONAL SETTING

Summary

The Secretary-General has the honour to transmit to the Commission on Crime Prevention and Criminal Justice the recommendations of the Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting, held at Vienna from 18 to 22 December 1995, and convened by the Secretariat in pursuance of General Assembly resolution 48/228, approving the 1994-1995 Programme Budget. The report of the Meeting covering a summary of the discussion is contained in document E/CN.15/1996/CRP.1.

*E/CN.15/1996/1.

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RECOMMENDATIONS

The Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting adopted two recommendations, the first of which comprised a resolution and five annexes.

Recommendation 1. Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting,

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, approved by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and adopted by the General Assembly in its resolution 40/34 of 29 November 1985,

Recalling also Economic and Social Council resolution 1989/57 of 24 May 1989, by which the Council recommended that the Secretary-General consider the preparation, publication and dissemination of a guide for criminal justice practitioners and others engaged in similar activities,

Noting that the Economic and Social Council, in its resolution 1990/22 of 24 May 1990, recognized the need for continuing efforts to give effect to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and to adapt it to meet the full range of needs and circumstances of different countries,

Bearing in mind the resolution of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the protection of the human rights of victims of crime and abuse of power, which called upon States to take into account the provisions of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in framing their national legislation and recommended that Governments should consider the availability of public and social support services for victims,[1]

Bearing in mind also the results of the Workshop on the Prevention of Victimization, Protection and Assistance for Victims, and Conflict Resolution, held at Oñate, Spain, from 13 to 16 May 1993, and the recommendations contained therein,

Recalling that the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders had on its agenda the topic "Crime prevention strategies, in particular as related to crime in urban areas and juvenile and violent criminality, including the question of victims: assessment and new perspectives", and that, in its resolution entitled "Recommendations on the four substantive topics of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders", the Ninth Congress expressed its concern about the plight of victims of crime and urged the full use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[2]

Recalling also Economic and Social Council resolution 1995/13 of 24 July 1995, in which the Council requested the Secretary-General to seek the views of Member States and relevant organizations on the advisability of preparing a manual on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,

1. *Expresses its concern* that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that in many countries the rights of these victims have not been adequately recognized;

2. *Recognizes* that the victims of crime and of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders;

3. *Considers* that the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power remains a landmark in international efforts to improve the treatment of victims;

4. *Believes* that wide-ranging measures, including the adoption of legislation, as necessary, need to be taken at the national and international levels to improve the access to justice and fair treatment, reparation, including restitution, compensation and satisfaction, and physical, medical and social assistance, to realize the promise held out by the Declaration;

5. *Maintains* that United Nations measures on behalf of victims should be comprehensive, multisectoral and interdisciplinary, and that these measures should be integrated and coordinated among the various agencies and relevant United Nations bodies and programmes;

6. *Maintains* also that interventions on behalf of victims should be based on the principle of complementarity of mandates, objectives and modes of operation of the various relevant United Nations bodies and programmes, as well as of the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and competent national and international governmental and non-governmental organizations;

7. *Considers* that during armed conflict, respect for the rights of victims as stipulated in relevant international laws, in particular in international humanitarian law, should be vigorously enforced and that universal adherence to the corresponding treaties and protocols should be promoted;

8. *Notes* with satisfaction the promising progress made by some Governments in this respect;

9. *Regrets*, nevertheless, that during more than a decade, the majority of victims across the world continued to suffer needlessly without adequate care and respect for their rights and needs;

10. *Adopts* the Integrated Plan of Action on Victims of Crime and Abuse of Power; the Model Project on the Establishment of Victim Services in the Context of Sustainable Development; the Promising Practices Resources; and the Scheme for International Crises Response Teams for Emergency Assistance, contained in annexes I-IV, respectively, to the present resolution;

11. *Approves* the overall approach contained in the general outline of a draft manual on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power contained in annex V to the present resolution;

12. *Recommends* that further work be undertaken to finalize the draft manual, including the preparation of a component suitable for training in work with victims of abuse of power and to ensure its widespread distribution in the six official languages of the United Nations;

13. *Recommends also* that the Commission on Crime Prevention and Criminal Justice consider, with a view to their adoption, the Integrated Plan of Action and other recommendations made by the Meeting.

Annex I

AN INTEGRATED PLAN OF ACTION ON VICTIMS OF CRIME AND ABUSE OF POWER

A. Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

1. Surveys of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and other relevant efforts for its implementation should permit a more accurate assessment of the advances made nationally and internationally, the results of which should serve, *inter alia*, as a basis for further policy development and action. These efforts should include:

(a) Assessing the progress made at the national level, as reflected in the Secretary-General's reports on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (E/AC.57/1988/3 and E/AC.57/1990/3) and in the synthesis of the responses to the United Nations surveys of the implementation of the Declaration, a summary of which is submitted to the Commission on Crime Prevention and Criminal Justice;

(b) Assessing the progress made at the regional and international levels, including the efforts made by entities of the United Nations system and other relevant organizations, as called for in General Assembly resolution 40/34 adopting the Declaration;

(c) Identifying the obstacles encountered and ways of overcoming them;

(d) Action by the Commission on Crime Prevention and Criminal Justice, which would consider the balance-sheet and make relevant recommendations to correct the shortfalls, in pursuance of the mandates, such action to include:

(i) Wider dissemination and translation of the Declaration, with possible regional annotations;

(ii) Formulation of model legislation for the application of the Declaration at the national level, adaptable to different systems;

(iii) Finalization of the draft manual on the use and application of the Declaration, for circulation to Governments and other entities for comments and submission to the Commission for review and approval, with a view to its serving as a basis for technical assistance projects and wider dissemination;

(iv) Implementation of relevant recommendations for strengthened international action in this area, following the directions identified by the Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting and drawing, *inter alia*, on the conclusions of relevant meetings, such as those of the Oñate Workshop on the Prevention of Victimization, Protection and Assistance for Victims, and Conflict Resolution.

B. Strengthening operational activities to improve the situation of victims by fostering the application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power training and other technical cooperation activities

1. Training

2. Training should be conducted, with special emphasis on:

(a) Developing training programmes using the manual on the use and application of the Declaration and core curricula for the treatment of victims;

(b) Appropriate training for all those working with victims, including law enforcement officials (e.g. dispatchers, patrol officers and investigators), prosecutors, judges and court administrators, correction officials, health professionals (e.g. physicians, nurses, and primary health care providers), mental health and social services (e.g. psychiatrists, psychologists, criminologists, victimologists, social workers and crisis intervenors), the media (e.g. reporters, editors and photographers), clergy and spiritual leaders, traditional healers, educators (e.g. teachers), emergency response personnel (e.g. ambulance drivers, emergency medical technicians, paramedics and fire personnel), military personnel (including peacekeepers), managers and administrators, such training to be conducted as follows:

(i) All volunteers working with victims should receive training as well. Volunteer organizations should ensure that their personnel receive appropriate training and care;

(ii) All those who work in an international context should be sensitized to cross-cultural practices, concerns and the particular conditions of their work, and also provided with care when exposed to situations involving the victimization of and trauma inflicted on the population they are mandated to protect and assist;

(iii) Training should address the following topics: the concerns and care of the victims in the aftermath of the victimization (attention should be given to populations at risk); the concerns and care of care-givers; the role of all professions and functioning of institutions involved in victims' care, coordinating multidisciplinary responses; addressing and responding to the practical conditions at the particular site (e.g. crime, abuse of power, war and other mass catastrophes); conflict resolution techniques and victimization prevention;

(iv) Individuals conducting the training, including the training of trainers, should have recognized expertise and experience in working with victims, as well as in working in a multidisciplinary context. Those training in the international setting should, in addition, have cross-cultural expertise;

(v) This training should be carried out in professional schools and universities, post-graduate studies, continuing education programmes, and by in-service and on-the-job training;

(vi) Training should also be given through seminars and courses: at the national level, with interested Governments; at the regional level, with United Nations institutes, affiliated institutes and other relevant entities (e.g. regional commissions and development banks); and at the international level, with the United Nations Development Programme (UNDP) and other United Nations entities and relevant organizations, to provide the necessary leadership and follow-up;

(vii) All training programmes should include an evaluation of their effectiveness and be continuously revised in the light of experience and new scientific findings.

2. Other technical cooperation activities

3. Other technical cooperation activities should include:

(a) The incorporation of victim-related provisions in criminal justice and other legislative reforms and constitutional provisions, as appropriate, to improve the status of the victim in the criminal process;

(b) The establishment of victims services as part of development aid, including the dissemination of the Model Project on the Establishment of Victim Services in the Context of Sustainable Development;

(c) Incorporation of victim assistance modules in advisory programmes of the Crime Prevention and the Criminal Justice Division including, as appropriate, the missions of its Interregional Advisors, as well as in those of other United Nations entities and cooperating institutes and organizations;

(d) In the context of crimes, human-made catastrophes and natural disasters, particularly those due to criminal negligence, provision of emergency assistance using interdisciplinary and international crisis-response teams, in order to assist local authorities address the situation and the needs and rights of the victims in pursuance of the Declaration;

(e) In the aftermath of armed conflict, of systematic abuses of power by Governments and other causes of widespread and grave victimization, such as the destruction of institutions of government and justice, the Crime Prevention and Criminal Justice Division and the interregional advisers should be equipped, in cooperation with other relevant agencies contributing to the process of reconstruction, to provide assistance in the restoration of the rule of law and recognition of the rights of victims, such as the right to reparation, including compensation;

(f) Provision of specialized assistance, in collaboration with, *inter alia*, the Office of Legal Affairs, Division for the Advancement of Women, Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), the United Nations Development Programme (UNDP) and the World Health Organization (WHO), to victim groups (e.g. refugee and migrant victims of xenophobic violence, female and child victims of violence, abuse and exploitation, and victims of terrorism and organized crime);

(g) Provision of appropriate care to those involved in protecting and assisting populations exposed to situations of victimization of and infliction of trauma.

C. Research and information exchange

4. Activities in this regard should be enhanced by:

(a) Endorsing and encouraging the participation of Governments, intergovernmental and non-governmental organizations and other relevant agencies in contributing to supporting and using the Promising Practices Resource;

(b) Collaborating in the international victimization surveys and inclusion of select victimization data in the world crime surveys (with the United Nations Interregional Crime and Justice Research Institute et al). A global report on victimization, conflict resolution and victim assistance, drawing on official and unofficial sources, is suggested as a task for the International Scientific and Professional Advisory Council (ISPAC);

(c) Formulating guidelines for the media to protect victims and curtail further victimization in line with the recommendations of the workshop on mass media and crime prevention of the Ninth Congress;

(d) Improving public information and education to prevent and curtail victimization, especially by the preparation of a handbook for victims;

(e) Familiarity with existing knowledge and further evaluation of the efficacy of different kinds of treatment for victims and of preventive strategies, including evaluation components in technical assistance projects and pilot schemes.

D. Development of international means of recourse and redress where national channels may be insufficient

5. National remedies may be lacking or insufficient where there are multiple or conflicting jurisdictions, which may be the case in transnational crime. Under repressive regimes or in other cases where recourse for grievances and repatriation are lacking, supranational venues may be necessary, which would include the procedures established under the United Nations human rights programme and regional mechanisms (such as the human rights courts). The establishment of the international tribunals for the former Yugoslavia and Rwanda, and for the envisaged international criminal court, offer added prospects for the punishment of perpetrators and remedies for victims, if they are properly invoked. They can also help to remove demands for impunity from conflict resolution and negotiations. There have been repeated calls for the development of international means of recourse and reparation, by the Ninth Congress and the Oñate Workshop among others, as well as the Economic and Social Council in its resolution 1990/22. This is an area of mounting need and fruitful prospects, in which the United Nations crime prevention and criminal justice programme can play an important role.

6. The following action is recommended:

(a) Developing and applying monitoring procedures based on a permanent or ad hoc United Nations presence around the world to assess situations of escalating victimization, in collaboration with local and international non-governmental organizations, and to report thereon;

(b) Evaluating relevant provisions and procedures of international criminal, human rights and humanitarian law and codes to determine normative, institutional and technical gaps in the protection of victims and making recommendations (in collaboration, for example, with the Office of Legal Affairs, the Department of Peace-keeping Operations, the Department of Humanitarian Affairs, UNHCR, the Commission on Human Rights, UNICEF and the International Committee of the Red Cross);

(c) Developing new means of recourse in the United Nations framework; for example, the right of petition in cases of massive threats to the security of people, as proposed by the Commission on Global Governance; expansion of hotlines (such as that of the High Commissioner for Human Rights); establishment of an international human rights court; and the role of the Commission on Crime Prevention and Criminal Justice as focal point and guardian of the observance of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;

(d) Conducting a feasibility study on the establishment of an international fund for victims of crime, including transnational crime, in case of jurisdictional disputes or lack of national remedies, in accordance with the Eighth Congress resolution on the human rights of victims of crime and abuse of power);

(e) Promoting the inclusion of victim-related provisions in a statute for a proposed international criminal court.

E. Promoting an integrated United Nations system-wide approach to curtail victimization and protect/assist victims

7. The following steps should help to strengthen activities relevant to an integrated United Nations system-wide approach to curtail victimization and protect/assist victims, improve coordination and promote a concerted and more productive approach:

(a) Strengthening on-going arrangements and procedures to ensure joint planning, operational coordination and a more integrated approach to activities on behalf of victims and to achieve optimum results. Consideration should be given to the establishment of an inter-agency task force on victims, with the

participation of the Crime Prevention and Criminal Justice Division and other relevant entities to foster a more integrated approach and coordinated action;

(b) Identification of existing and prospective needs, of the tasks to be undertaken and of the division of responsibilities;

(c) Collaboration with the relevant entities on specific standard-setting activities in relation to victims (e.g. with the Centre for Human Rights on the proposed basic principles and guidelines with respect to the right to restitution, compensation and rehabilitation for victims of gross violations of human rights).

Annex II

MODEL PROJECT ON THE ESTABLISHMENT OF VICTIM SERVICES IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT

A. Background and rationale

1. In many parts of the world, escalating criminality, particularly organized and violent crime, is impeding sustained development or development prospects, impairing the quality of life and creating a pervasive sense of insecurity. Such criminality and its concomitant victimization, especially in urban areas beset by such other serious problems as dwindling services unable to meet the needs of burgeoning populations, compound the instability and act as a deterrent to social peace and economic investment. In areas beset by conflicts, mass victimization takes place across generations. Children caught in armed conflict or otherwise living in difficult circumstances (e.g. street children) are frequent victims, sometimes conscripted into criminal activities at an added social cost. Confidence in the criminal justice system and its ability to protect the population wanes when victimization is frequent and remedies few, if any.

2. In the process of transition to more democratic systems and privatization of economic activities, especially where there is legal flux or a lag in developing the necessary provisions, crime has become a growth industry and violence a daily threat. The growing numbers of victims have little recourse and rarely any redress or assistance, which compounds their problems and is likely to have future negative consequences. Even where victim-oriented systems have been a mainstay of customary justice, they now often fail to make provision for victims, which is a situation prevalent in many systems and constitutes a denial of the basic tenets of justice, humanity and solidarity. Concerned about the situation and recognizing that good governance and a vital civil society call for remedial action, many countries seem eager to establish victim services and to improve the position of the victim in the criminal justice system. While this position will vary from country to country, certain common policy guidelines can nevertheless be utilized to respond to these needs. Such guidelines can serve as a basis for the formulation of one or more model projects (e.g. on the establishment of victim services) and the improvement of the position of the victim in the criminal process (e.g. by model legislation or reforms to be undertaken in the context of legislative reviews). Basic elements of one such model project, the Model Project on the Establishment of Victim Services in the Context of Sustainable Development, are described below.

B. Model project justification

3. The mandate for initiatives such as the Model Project on the Establishment of Victim Services in the Context of Sustainable Development is contained in General Assembly resolution 40/34, in which the Assembly, on the recommendation of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan in 1985 adopted in Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. A review of the application of the Declaration at the national level has demonstrated the considerable efforts that have been made to implement its various provisions, but also some shortfalls, traceable to problems of resource constraints, and means of proceeding and means of meeting increasing victim needs. The globalization of crime has brought with it also the internationalization of victims and the movement on their behalf. The growing attention to the plight of victims and efforts to remedy their situation in some countries have found an echo elsewhere, as has advocacy for different victim groups. The need to develop victim services and to render United Nations assistance in this regard, expressed by a number of countries, justifies the undertaking of operational activities.

C. Development objective

4. A major objective of the Model Project is to reduce the human and material costs of criminality and victimization by assisting the victims of crime and abuse of power and seeking to prevent crime and

secondary victimization. Such assistance, by the provision of appropriate services, would serve to improve and rationalize existing efforts and to develop more effective ways of meeting the needs of victims as well as the exigencies of justice and fairness. By providing appropriate recourse and remedies for victims of crime and abuse of power and means for their rehabilitation, human lives can be reclaimed and used productively in pursuing sustainable development and a better quality of life for all.

D. Immediate objectives

5. The immediate objectives of the Model Project are as follows: to meet victim-related needs and to make available relevant services, responding to the number and kind of victim populations; to improve the status of personnel, and to propose a viable action plan based on the Model Project.

E. Activities

6. Assessment of the situation prevailing in the country should be undertaken:

(a) To identify the governmental institution where an assistance programme for victims of crime and abuse of power can most appropriately be placed. This implies either the existence of adequate facilities or the capacity to adapt certain facilities to provide basic physical and human resources for the programme;

(b) To identify political figures and formal or informal community leaders who can foster the political will to mobilize efforts benefitting victims;

(c) To design an operational system for coordination and collaboration among public and private institutions and non-governmental organizations able and willing to provide assistance to victims of crime and abuse of power;

(d) To assess the availability and capacity of governmental institutions and non-governmental organizations, and the health, psychosocial, legal, information and guidance services that they can provide to victims of crime and abuse of power, as well as to assess their training requirements and support facilities necessary to meet the needs of victims of crime and abuse of power;

7. The activities to be carried out in response to these efforts would include:

(a) Identification of a national focal point in the country, to be entrusted with the coordination of various victim services;

(b) Assessment of existing victim services, with a view to identifying their possible shortcomings;

(c) Organization of joint information and planning meetings, with a view to recommending appropriate policies and implementation strategies, including a review and possible revision of existing laws concerning victims in accordance with the Declaration and other internationally recognized principles of good practice.

8. The requisite physical and human resources needed for the project should be determined in cooperation with the professionals involved, including the police, justice officials, correctional personnel, psychologists, physicians, social workers, administrative personnel, victimologists, criminologists and voluntary organizations.

9. In order to be more responsive to the needs of victims and their families, efforts should be made:

(a) To ensure timely intervention, particularly to those who are most vulnerable and/or in a crisis situation, by providing the following services:

(i) Emergency help to meet the victim's immediate needs, including protection against retaliation by the offender;

(ii) Medical, psychological, social and material assistance;

(iii) Advice to prevent further victimization;

(iv) Information on the victim's rights;

(v) Assistance during the criminal process, with due respect to the prerogatives of the defence;

(vi) Assistance in obtaining effective reparation of the damage from the offender, payments from insurance companies or any other agency and, when possible, compensation by the State;

(b) To create, develop and provide support for the following:

(i) Services designed to provide assistance to victims generally;

(ii) Services for special categories of victims, such as children, and, when necessary, to victims of particular offences, such as rape, domestic violence, organized crime and violence based on sectarian hatred;

(c) To encourage voluntary aid, supported, as necessary, by professional help for training, specific services, administrative and technical support;

(d) To strengthen the contribution of general medical and social services, for example, by training their personnel to be responsive to the victims' needs;

(e) To inform the public, by adequate means, of the assistance available and facilitating access by victims to these services, including the referral of victims by the police to available services, and outreach to victims by such services, to the extent compatible with the protection of the victim's privacy;

(f) To take steps to prevent victim assistance services from disclosing personal information regarding victims to third parties without their consent;

(g) To promote coordination of victim assistance services operating on a public and private basis, as well as with agencies of the criminal justice system and other public services;

(h) To support the establishment of national organizations and mechanisms to advance the interests of victims;

(i) To evaluate the extent of insurance coverage by public or private insurance schemes for the various categories of criminal victimization and seek ways to make insurance more effective in relation to the needs of victims;

(j) To encourage experiments (whether on a national or local basis) in mediation between the offender and his victim and evaluate the results with particular reference to how far the interests of the victim are served;

(k) To make every effort to prevent crime, and hence victimization, both through socio-economic development and through appropriate situational prevention measures;

(l) To provide the public and victims with specific information and advice to prevent victimization or further victimization, while refraining from unduly exacerbating the feelings of fear and insecurity;

(m) To develop special policies to ascertain particularly vulnerable groups and prevent their victimization;

(n) To promote educational measures and other action for the prevention of victimization, and encourage groups with high victimization risk to take appropriate preventive measures in collaboration with local agencies and the police;

(o) To refer to data sources and the proposed databank on promising practices in order to inspire action and facilitate the implementation of all necessary measures for victim services and legislation;

(p) To review existing legislation with a view to ensuring its responsiveness to victims' needs;

(q) To monitor and evaluate, through research, provisions for victim assistance by public and private services;

(r) To evaluate the effectiveness of programmes aimed at preventing victimization of the population as a whole and/or of certain groups, and the efficacy of treatment programmes for different kinds of victims.

Annex III

PROMISING PRACTICES RESOURCE

A. Objective

1. The objective is to promote wider implementation of services and application of law and procedure on behalf of victims, establishing a data base on promising practices and legislation on victim-related issues. The availability and accessibility of these successful strategies would facilitate the exchange of information, inspire action and strengthen the networks of persons working on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34.

B. Background

2. Promising practices provide models on how pressing and apparently complex problems can be alleviated. They constitute a knowledge base for effective action. They represent the latest solutions to common problems facing countries.

C. Practices to be included

3. The data base would include examples of laws, services, training curricula and manuals for practitioners. The promising practices would be identifiable by various key words.

4. Model laws and existing legislative provisions might include prototypes on the role and standing of the victim in criminal law and procedure, ways of encouraging reparation from the offender to the victim and State compensation for victims. Information on mediation, dispute resolution and reconciliation strategies and techniques would be made available, as well as on successful services for victims generally, and for specific types of victim, such as children, women, the aged, disabled or those subjected to particular types of violence, such as terrorism, torture or dangerous driving.

5. A directory of services available to victims would be listed by agency.

D. Information on promising practices

6. The core of the data base would consist of short descriptions of each promising practice that would include the aim, a programmatic summary, the results, any scientific evaluation, the contact person, the years of operation and additional sources of information. A key-word system would be used, so that users of the system could access projects of particular type or in a specified region of the world.

7. More extensive information might be available in reports held in different documentation centres. A newsletter or kits might also be prepared from time to time on issues of common interest.

8. Criteria would need to be established for the selection of the practices to be included. The overriding consideration is the extent to which the practices would promote the successful implementation of the principles of the Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power. They must have some viability or permanence and some relevance to problems faced by other jurisdictions.

E. Identification of relevant agencies

9. Many organizations concerned with crime victims already have national collections of promising practices. Some of these are in the form of standards, manuals that use examples or directories that highlight particular legislative or programme responses. It is important to get such organizations as the World Society of Victimology, the International Society for Criminology, the European Forum for Victim Services, the International Society for Traumatic Stress Studies and the International Socio-Medical Information Centre of the World Veterans Federation, as well as relevant United Nations organizations and programmes concerned with this issue, to contribute these materials in an agreed format.

10. International non-governmental organizations such as the World Society of Victimology and the International Society for Traumatic Stress Studies have bibliographies, materials and curricula that would be useful and they could encourage their members to provide additional examples of promising practices.

11. Reference and electronic conferencing services such as the United Nations Crime and Justice Information Network, the United Nations On-Line Crime and Justice Clearinghouse (UNOJUST), the World Criminal Justice Library Network and the Criminal Justice Reference Service of the United States National Institute of Justice include some examples of best practices.

12. The preparations for Habitat II have led to the development of considerable expertise in the creation of networks of information on promising practices in the urban setting.

13. The United Nations institutes and other affiliated centres have taken important initiatives in this respect and could continue to make valuable contributions. The International Centre for the Prevention of Crime (ICPC) could spearhead this initiative as part of its resource bureau on best crime prevention practices.

F. Identification of the users

14. The users of the best practice initiative would be those who contribute information and others who would like to establish effective ways of implementing the Declaration. These might be Governments, international and national associations concerned with victims, universities and other educational institutions, policy makers and government officials, legislators, parliamentarians, criminal justice personnel, criminologists, victimologists, psychiatrists, researchers and peacekeepers.

Annex IV

SCHEME FOR INTERNATIONAL CRISIS RESPONSE TEAMS FOR EMERGENCY ASSISTANCE

A. Context of intervention

1. The proposed Scheme for International Crisis Response Teams for Emergency Assistance could be used in situations of crisis and in cases of sudden collective victimization due to crimes involving numerous victims and requiring, because of their importance and impact, the development of a wide range of measures in order to deal with the various short- and long-term consequences for the victims.

2. Where armed conflict is ongoing and in situations of massive abuses of power, a different approach may be required.

B. Background and rationale

3. Even where assistance for ordinary crime victims exists, emergency situations and situations involving collective victimization require the capacity for an immediate and incisive mobilization of efforts, a professional quality of the activities undertaken, acceptance and cooperation from all the other services involved.

4. At present, problems arise in these circumstances, because there is:

(a) A lack of coordination between the different actors intervening;

(b) A need for sensitization of the professionals and para-professionals involved to the special problems encountered by victims and their families;

(c) A need for immediate assistance to victims and their families through a sustained, and coordinated response and proper follow-up;

(d) A lack of psycho-social support, which should be integrated into the action undertaken.

C. Objective

5. The purpose of the Scheme is (a) to be able to mobilize an international multidisciplinary team, which could quickly travel to its site in order to help local authorities address the situation and the needs and rights of the victims; (b) to offer them prompt assistance and; (c) to organize appropriate long-term support by the local authorities and any organizations working on the spot.

6. The team could be mobilized at the request or with the acceptance of Member States. Such requests could be made directly or channelled through the Crime Prevention and Criminal Justice Division of the United Nations.

D. Structure of the Scheme

7. The Division, together with the institutes in the United Nations crime prevention and criminal justice programme network and the interregional advisers could play a mobilization function by establishing and maintaining a list of international experts and of non-governmental organizations with practical experience in this field, ready to serve on such a team.

E. Method of intervention and organization

8. Immediately after the occurrence of an accident or crisis, a rapid assessment of the situation could be made to identify the nature and impact of the event, number and types of victim, and local possibilities for action, assistance and care, and to determine the way in which a rapid-response team could be organized to ensure appropriate action in order to cope with the situation and the needs of the victims.

9. The diagnosis would be made by the responsible authorities in liaison with the interregional advisers or representatives of the Crime Prevention Division.

10. On the basis of the assessment and according to the needs, an international expert or a multidisciplinary team of practitioners could be quickly sent to the site.

F. The mission

11. The mission would assist the national sectors involved at various levels:

(a) To ensure a safe environment for the victims;

(b) To facilitate as far as possible with the local authorities, the establishment of a crisis centre to deal with the victims as part of the rescue operations;

(c) To make a first evaluation of the needs and provide information and emergency assistance to the victims;

(d) To identify local services and groups in contact with the victims and mandated to offer short- and long-term assistance, such as doctors, police, social workers and groups of volunteers, and to organize for them a basic training programme to strengthen their capacity to cope directly with the problems of the victims and to raise the victim-sensitization;

(e) To set up a system to take care of the long-term needs of the victims, once the acute phase is over.

12. The mission would establish, if necessary, a mechanism to provide long-term support from abroad so that the local authorities would be able to ensure by themselves the continuation of the assistance to victims and to lay the basis for a permanent resource providing assistance to the victims.

G. Expected benefits

13. Further to the immediate benefits to the victims in reducing psychological trauma, secondary victimization, the negative impact on public opinion and the risk of crime and violence in the aftermath of the event, such a scheme should allow in countries where a system of ordinary victim assistance exists, for the improvement of the existing system, reinforcement of know-how and an increase in the efficiency of the operations. In countries where nothing exists, the scheme would stimulate the establishment of such a system, convince the authorities of its benefits and assist in doing so. Every effort should be made in this connection to draw on indigenous practices and traditions, especially in developing countries that may have a long-standing victim-centred approach in their customary justice system.

H. Financing

14. To guarantee rapid action by the international team, a financial reserve system is a necessary condition and should be set up. It could be constituted either by an allocation taken out of existing extrabudgetary trust funds or by new ad hoc extrabudgetary contributions. This financial reserve would permit the immediate

mobilization of the international team and should be replenished after each action by the Member States supporting the United Nations operations in the country affected. In the meantime, any national structure, having agreed to participate on the international team, should try to convince its own Government to financially support its participation in the international mechanism established for this purpose.

I. Implementation

15. A list of experts should be drawn up by the Crime Prevention and Criminal Justice Division in cooperation with the major organizations specialized in assistance to victims of crime and ready to mobilize their human resources.

16. The Crime Prevention and Criminal Justice Division should ensure that the work of the team is coordinated with other United Nations entities and non-governmental organizations as well as assisting in developing standards, a code of ethics, training materials and training sessions.

Annex V

OUTLINE OF A DRAFT MANUAL ON THE USE AND APPLICATION OF THE DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

SECTION ONE. PHILOSOPHY, BACKGROUND AND EXTENT OF THE PROBLEM

Chapter I. Philosophy

The Manual should be a guide for implementing general victim assistance. It should outline the fundamentals of victim service programmes, how to establish them and the techniques for providing victim support. While such programmes and policies may be established voluntarily, legislative change may be necessary.

Chapter II. Background: significant international action addressing victims

A. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
B. Relevant resolutions; Siracusa and Oñate meetings
C. Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting, Vienna 1995.

Chapter III. The extent of the problem

A. Statistics from international crime victimization surveys
B. Data on refugee populations and victims of war and conflict
C. Data on underreporting of victimization and multiple victimization.

SECTION TWO. VICTIM SERVICE PROGRAMMES

Chapter I. How to start a victim service programme

A. Defining the scope of a victim service programme
B. Programme planning: (a) assessment of existing victim needs and service in the jurisdiction; (b) defining programme parameters
C. Implementation of the programme: (a) implementation steps; (b) service availability; (c) use of information; (d) types of service; (e) guidelines for developing multidisciplinary approaches.

Chapter II. Standards of services

A. Crisis intervention services
B. Counselling and general advocacy services
C. Support services during the investigation of the crime
D. Support services during prosecution and trial
E. Support services after case disposition
F. Working with interdisciplinary professionals
G. Public education services
H. Victimization prevention services.

Chapter III. Trauma of victimization: nature and scope

A. Financial and property injury
B. Physical injury
C. Psychological trauma: (a) the crisis reaction; (b) long-term stress reactions
D. Secondary injuries from the criminal justice system and society.

Chapter IV. Crisis intervention

A. Safety and security: (a) identify and respond to emergency needs; (b) provide a safe place for victims
B. Ventilation and validation: (a) defusing and calming victims; (b) providing an opportunity for victims to tell their story; (c) reassuring victims that their reactions are not uncommon; (d) assisting victims in restructuring the crisis situation
C. Prediction and preparation: (a) predicting future problems in the aftermath of victimization; (b) problem solving; (c) conflict management
D. Protocols for crisis intervention, working: (a) immediately after a crisis; (b) with crisis in a repetitive process; (c) with victims in the midst of an ongoing traumatic event.

Chapter V. Counselling and advocacy: skills and techniques

A. Post-trauma counselling: (a) trauma-specific orientation; (b) partnership with victims; (c) normalization of crisis events and integration of the event into victims' life history; (d) restoration and construction of new routines and the equilibrium of the victim
B. Techniques for post-trauma counselling: (a) education; (b) re-establishing healthy habits; (c) constructing supportive social networks; (d) re-visiting the crisis event; (e) developing the crisis story
C. Advocacy techniques: (a) individual case advocacy in the criminal justice system; (b) using the justice system for redress; (c) obtaining reparations through compensation, restitution and private litigation; (d) using the legislative process for social and legal change.

Chapter VI. Victim participation in the criminal justice system

A. Protection from harm: (a) protection of the privacy of victims; (b) protection from intimidation and harassment; (c) special provisions to protect vulnerable victims
B. Victims involvement with decision-making: (a) opportunity to receive information; (b) provide information
C. Victims involvement in corrections: victims opportunity to participate in: (a) victim-offender dialogue; (b) victim-education classes; (c) victim-impact panels
D. Treatment of victims with respect and recognition.

Chapter VII. Victim reparations

A. State compensation: (a) effective outreach, training and communication; (b) expeditious and accurate claims processing; (c) good decision-making; (d) sound financial planning
B. Restitution by offenders to victims and the community: (a) assessment of victim loss; (b) effective documentation of victim loss; (c) presentation of restitution claims; (d) good decision-making; (e) effective enforcement and supervision; (f) training and communication
C. Reparations by other means: (a) dignified treatment by private insurance agencies; (b) access to civil legal process.

Chapter VIII. Public education techniques

A. Develop a public relations campaign
B. Special events planning and implementation
C. Communication tools: brochures, newsletters and other programme promotions
D. Strategies for media management.

Chapter IX. Victim assistance through victimization prevention

A. Crime prevention as a technique for preventing re-victimization
B. Victim assistance as a victimization prevention technique
C. Organization of victimization prevention community-wide task forces
D. Factors that reduce victimization
E. Strategies for victimization prevention
F. Victimization prevention educational curricula.

Chapter X. Care for the victim assistance professional

A. Education on the stress and burn-out associated with care giving
B. Effective strategies for dealing with the impact of victimization on them.

SECTION THREE. INTERDISCIPLINARY PROFESSIONALS' RESPONSIBILITY TO VICTIMS

Chapter I. Law enforcement and victim assistance

A. Programme strategies for law enforcement on victim assistance: (a) law enforcement personnel as a crisis intervenors; (b) programme within a law enforcement agency; (c) collaboration with victim services or other allied agencies; (d) victim assistance for law enforcement personnel
B. Protocols for law enforcement personnel working with victims and victim assistance; responsibilities of: (a) dispatchers; (b) patrol officers; (c) investigators; (d) supervisors.

Chapter II. Prosecutors and victim assistance

A. Programme strategies for prosecutors on victim assistance: (a) strategies for prosecutors to work with victim-assistance professionals; (b) victim-assistance programmes in offices of the prosecutors; (c) problem-oriented community prosecution; (d) the prosecutor as a victim-assistance professional
B. Protocols for prosecutors working with victims and victim assistance: (a) victim information and notification; (b) victim restitution; (c) involving the victim in decision-making; (d) staff victimization.

Chapter III. The judicial role in victim justice

A. Sample recommendations for the judiciary on victim rights
B. Guidelines for judges when addressing victims of crime
C. Protocols on staff victimization.

Chapter IV. Correctional personnel and victim assistance

A. Programme strategies for victim assistance in corrections: (a) victim awareness/sensitivity and assistance in probation and parole agencies; (b) victim education or impact programmes for offenders; (c) victim-offender dialogue programmes; (d) peer counselling and staff victimization
B. Protocols for correctional personnel working with victims and victim assistance: (a) victim information and notification; (b) victim involvement in decision-making; (c) victim-education programmes; (d) victim-impact programmes; (e) victim-offender dialogue programmes; (f) staff victimization.

Chapter V. Schools and universities and victim assistance

A. Curricula development on victim assistance and victimization prevention
B. Victim assistance and crisis response programmes for school personnel and students
C. Integration of victim rights into school and university administrative procedures.

Chapter VI. Medical professionals and victim assistance

A. Victim-assistance programmes in emergency rooms and trauma centres
B. Protocols for medical professionals for treatment, referrals and reporting
C. Peer counselling and victim assistance for medical professionals.

Chapter VII. Media professionals and victim assistance

A. Educational programmes for the media
B. Victim-sensitive media code of ethics
C. Promising media policies affecting the victims
D. Crisis and peer counselling programmes.

Chapter VIII. Mental health

A. Critical issues of victim assistance for mental health professionals
B. Victim assistance and mental health referral systems
C. Role of mental health in victim assistance.

Chapter XI. Clergy and spiritual leaders

A. Critical issues of victim assistance for clergy and spiritual leaders
B. Victim assistance through religious and spiritual institutions
C. Role of the clergy and spiritual leaders in victim assistance.

Chapter X. Professionals working with other agencies having effect on victims

A. Policies or protocols for landlords or housing agencies: (a) programmes for relocation; (b) policies for home repair; (c) policies or laws prohibiting victims eviction
B. Policies or protocols for private insurance agencies: (a) protocols assessing damage; (b) settlement of claims
C. Policies and protocols for employers: (a) prevention and response to workplace violence; (b) fair treatment of victims on job; (c) fair treatment in administrative proceedings.

SECTION FOUR. VICTIM RIGHTS; LEGISLATION AND POLICY

Evolution at the national level; legislation or policy changes.

Chapter I. Victim rights legislation in the state and federal systems

A. Description of the basis of victim rights such as the right: (a) to be protected from intimidation and harassment; (b) to be informed; (c) to counsel; (d) reparations; (e) property and employment; (f) due process; (g) to be treated with dignity and compassion

B. To track the statutory and case-law history of victim rights: (a) the general state of the law; (b) current bills of rights.

Chapter II. Movement towards constitutional change

SECTION FIVE. VICTIMS OF THE ABUSE OF POWER

(The Expert Group recommended that further work be undertaken to prepare this section and finalize the manual.)

Recommendation 2. Principles Guaranteeing the Rights and Interests of Victims in the Proceedings of the Proposed International Criminal Court

The Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting

Adopts the Principles Guaranteeing the Rights and Interests of Victims in the Proceedings of the Proposed International Criminal Court annexed to the present resolution and recommends that they should be reflected, as appropriate, in the statute and rules of procedure of the proposed International Criminal Court.

Annex

PRINCIPLES GUARANTEEING THE RIGHTS AND INTERESTS OF VICTIMS IN THE PROCEEDINGS OF THE PROPOSED INTERNATIONAL CRIMINAL COURT

1. Respect should be afforded to victims of the crimes adjudicated by the Court at all stages of the proceedings and by all offices involved (prosecutor, registrar, chambers, full court).

2. A special service should be established to ensure that these Principles are put into practice. The service should have appropriately qualified staff, with the specialization necessary to ensure treatment sensitive to the needs of different categories of victims, e.g. rape victims, children, aged persons, minority members and disabled persons.

3. Victims should be informed, in a language with which they are fully conversant, of their rights and role, as well as the scope, timing and progress of proceedings as they affect their interests.

4. The views and concerns of victims, including their right to reparation, should be presented and considered at appropriate stages of the proceedings, where their personal interests are affected.

5. Measures should be taken to avoid unnecessary inconvenience to victims, to protect their privacy and to ensure their protection, as well as that of their families and witnesses, against intimidation and retaliation, before, during and after the trial.

6. Proceedings should be conducted at no cost to the victims, with a view to avoiding infliction of a further burden upon them.

7. A compensation fund should be available to make awards to victims.

8. The Court should be empowered to award other forms of reparation and to offer satisfaction to victims.

9. All of the above must be so designed as to not adversely affect the rights of the defence to a trial whose fairness has to maintain the highest international standards.

Notes

[1] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.27.

[2] *Report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, 29 April-8 May 1995* (A/CONF.169/16/Rev.1), chap. I. The report will subsequently be issued as a United Nations sales publication.